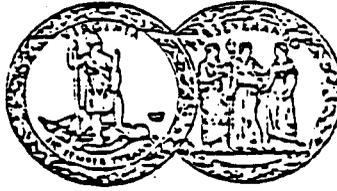


COMMONWEALTH OF VIRGINIA  
VIRGINIA EMPLOYMENT COMMISSION

SUITABLE WORK: 265.45  
Interview and Acceptance —  
Refusal or Inability to  
Meet Employer's Requirements



DECISION OF COMMISSION

In the Matter of:

Brenda Gittman  
██

Southco Corporation  
Alberta, Virginia

Date of Appeal  
to Commission: June 18, 1985  
Date of Review: July 22, 1985  
Place: RICHMOND, VIRGINIA  
Decision No.: 25372-C  
Date of Mailing: July 31, 1985  
Final Date to File Appeal  
with Circuit Court: August 20, 1985

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This is a matter before the Commission on appeal by the employer from the Decision of Appeals Examiner (UI-35-3684), mailed June 7, 1984.

ISSUE

Did the claimant leave work voluntarily without good cause as provided in Section 60.1-58 (a) of the Code of Virginia (1950), as amended?

Was the claimant discharged for misconduct connected with work as provided in Section 60.1-58 (b) of the Code of Virginia (1950), as amended?

Did the claimant fail without good cause to accept the employer's offer of suitable work as provided in Section 60.1-58 (c) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The employer appealed from the Decision of Appeals Examiner which held the claimant qualified for benefits effective March 24, 1985 based on separation from her last employment.

Southco Corporation was the claimant's last employer where she had worked as an insurance agent from 1978 through March 13, 1985.

The employer was told by a major stockholder that the claimant was planning to leave her job to accept work with one of the employer's competitors. On March 14, 1985, when the claimant reported for work, the employer told her that her resignation was being accepted immediately and that March 13, 1985 was the last work day for which she would be paid. The employer had taken this action because he believed that the sensitive nature of the claimant's work would make it detrimental to his business interests if she continued to work while negotiating a position with the competitor. The employer later informed the claimant that she could return to her job the following week if she terminated her discussions with the competitor and furnished assurances to the employer that she had done so. The claimant did not take any action to comply with the employer's guidance as to the actions she could take to obtain reinstatement in her job.

By letter dated May 20, 1985, the claimant advised that she could not attend the Appeals Examiner's hearing because of having only recently obtained new employment. In the letter, the claimant indicated that she "did not, in all dignity, see how I could call him and ask him to rehire me" because the employer had "accepted my resignation when I had never offered it to him" and his words had sounded final.

In his letter of appeal, the employer stated that:

"The basis of this appeal is that the claimant was offered the opportunity to return to work and declined to do so. As such, we contend that she was voluntarily unemployed, having refused an opportunity to return to work with this firm."

#### OPINION

Section 60.1-58 (a) of the Virginia Unemployment Compensation Act provides a disqualification if it is found a claimant left work voluntarily without good cause.

In Thomas L. Cotter v. Stageway Restaurant, Inc., Decision No. 5837-C, January 2, 1973, the Commission held that where a claimant had advised his employer he was looking elsewhere for another job but would not leave without giving proper notice and the employer responded by releasing the claimant, there was no voluntary leaving.

Although the claimant in this case was looking for other employment, she had not given notice that she was resigning. The employer's action in the case was, in effect, a termination of her services. The claimant's action which brought this about was not for misconduct connected with her work. Therefore, she cannot be disqualified for benefits under the provisions of Section 60.1-58 (b) of the Code.

Section 60.1-58 (c) of the Unemployment Compensation Act provides a disqualification if it is found a claimant failed without good cause to accept suitable work when so offered.

With regard to the claimant's failure to accept the employer's offer to rehire her, the question is not whether the work was suitable, but whether the claimant had good cause in failing to accept the offer. The Commission has consistently held that a claimant has good cause to change from one job to another where she has a reasonable expectation of improving her employment status. While the claimant in this case had not been offered other work to which she could transfer, the employer placed a condition on the agreement to allow her to return to work which would deny her the opportunity to attempt to find a better job. Although the employer did not want the claimant to negotiate for work with the competitor due to the "sensitive nature" of her work, there is nothing in the record to show that the claimant was accused of actually violating a trust or otherwise disregarding the employer's business interest.

It is concluded that the employer's condition on the offer to reinstate the claimant was so restrictive that she had good cause in failing to accept it. (Underscoring supplied)

#### DECISION

The Decision of Appeals Examiner qualifying the claimant for benefits effective March 24, 1985 based on the reasons for separation from her last employment is hereby affirmed.

It is also held that the claimant had good cause in failing to accept the employer's offer of suitable work.

  
Eugene Pitts  
Special Examiner